

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE ESTATE OF: BETTY JEAN COLLINS, DECEASED; ROBYNE D. RIDLEY-
MCKINNEY AND CHARLOTTE LAJEAN RIDLEY,
APPELLANTS
vs.**

**TINA SHOEMAKER, ET AL.,
RESPONDENTS**

DOCKET NUMBER WD75448

DATE: AUGUST 6, 2013

Appeal from:

The Circuit Court of Benton County, Missouri
The Honorable Mark B. Pilley, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, P.J., Lisa White Hardwick and Cynthia L. Martin, JJ.

Attorneys:

Robert T. Wilhelmus, for Appellants

Gary V. Cover, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

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IN THE ESTATE OF: BETTY JEAN COLLINS, DECEASED; ROBYNE D. RIDLEY-MCKINNEY AND CHARLOTTE LAJEAN RIDLEY, APPELLANTS

v.

TINA SHOEMAKER, ET AL., RESPONDENTS

WD75448

Benton County, Missouri

Before Division Three Judges: Joseph M. Ellis, P.J., Lisa White Hardwick and Cynthia L. Martin, JJ.

Appellants Robyne Ridley-McKinney and Charlotte Ridley appeal from a judgment entered in the Circuit Court of Benton County concluding that Tina Shoemaker had the right and authority, pursuant to a Durable Power of Attorney for Health Care Choices and Health Care Directive, to determine the disposition of the body of Appellants' mother, Betty Jean Collins. The durable power of attorney provided that, when effective, Shoemaker would have the power to make health care decisions for her and to decide what should be done with her body. The durable power of attorney stated that it would become effective when a physician certified that Collins was incapacitated and unable to make and communicate health care choices. Shortly after executing the durable power of attorney, Collins died instantly in an automobile accident. Shoemaker sought to have Collins cremated. Appellants, who wished for Collins to be buried in a family burial plot, filed an action seeking to prohibit Shoemaker from having Collins body cremated. The circuit court ultimately ruled in favor of Shoemaker and ordered the body conveyed to Shoemaker for cremation.

REVERSED AND REMANDED.

Division Three holds:

(1) If the power of attorney signed by Collins was operative and effectively granted the right of sepulcher to Shoemaker, she would be the next-of-kin pursuant to § 194.119.4 and have priority in exercising those rights. The durable power of attorney executed by Collins, however, stated that it only becomes effective after a physician has certified that Collins is incapacitated and unable to communicate health care choices. That condition precedent was not satisfied, and accordingly, the power of attorney never went into effect. The circuit court, therefore, erred as a matter of law in concluding that Shoemaker had the right of sepulcher pursuant to that document.

(2) Consideration of extrinsic evidence of Collins's intent in executing the power of attorney and her general wishes related to the disposition of her body would be contrary to the parol evidence rule as the power of attorney was unambiguous.

(3) A death certificate from a non-physician coroner is not the same thing as a physician's certification of incapacity.

Opinion by Joseph M. Ellis, Judge

Date: August 6, 2013

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